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DEPUTY

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

KOHLER COMPANY and ANN SACKS TILE AND STONE, INC.,

Plaintiffs,

vs.

DOMAINJET, INC.; JACK SUN; and DOES 1 through 10, inclusive,

Defendants.

CASE NO. 11-CV-1767 BEN (KSC)

ORDER GRANTING PLAINTIFFS' MOTION FOR ATTORNEY'S FEES AND COSTS

[ECF No. 25]

Pending before the Court is Plaintiffs' unopposed motion for attorney's fees and costs in connection with their lawsuit against Domainjet, Inc. and Jack Sun (collectively, "Defendants"). ECF No. 25. For the reasons stated below, Plaintiffs' motion is **GRANTED**.

BACKGROUND

On August 8, 2011, Kohler Company and its subsidiary Ann Sacks Tile and Stone, Inc. (collectively, "Plaintiffs") filed a complaint against DomainJet, Inc., Jack Sun, and Does 1 through 10. Plaintiffs sought relief for cybersquatting under 15 U.S.C. § 1125(d), trademark infringement under 15 U.S.C. § 1114, and trademark dilution under 15 U.S.C. § 1125(c). Compl., ECF No. 1. Plaintiffs' initial attempts to serve Defendants failed, and the Court eventually authorized service via electronic mail. Plaintiffs sent copies of the complaint and summonses

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1 │ to Defendants at two e-mail addresses. From one of those addresses, Plaintiffs

2 │ received a response that stated, "[y]ou are just doing useless things," and "[y]ou

3 │ should know how to protect yourself instead of doing useless things like a fool,"

4 │ among other things. On December 11, 2012, the Court granted default judgment for

5 │ Plaintiffs. ECF No. 24. Plaintiffs now move for attorneys' fees and costs.

6 │ Defendants did not file an opposition. The Court finds this matter suitable for

7 │ resolution without oral argument pursuant to Civil Local Rule 7.1.d.1.

8 │ <div align="center">**DISCUSSION**</div>

9 │ **I.   ATTORNEY'S FEES**

10 │ Plaintiffs seek an award of attorney's fees in the amount of $90,093.60 based

11 │ on the time on this action spent by six attorneys (Jason Elster, Daniel Rubinstein,

12 │ Robert Adel, Ian Burkow, William Tran, and Paul McGrady, Jr.), and five

13 │ paralegals (Nadine Varga, Loyanna Grierson, Maritza Sandoval, Lee Hutcherson,

14 │ and Ira Milton). During the relevant time frame, each was associated with the

15 │ international law firm Greenberg Traurig. Elster, Rubinstein, Burkow, McGrady,

16 │ Grierson, and Milton were based in Chicago. The others were based in Orange

17 │ County, California.

18 │ In support of the motion, Plaintiffs provide an affidavit from attorney Elster

19 │ as well as time sheets identifying tasks performed. Elster Aff., ECF No. 25-2.

20 │ Elster, an associate, explains that he charged a rate of $355-$370/hour and worked

21 │ for 48.3 hours on the matter. He states that Rubinstein, a shareholder, had a rate of

22 │ $630/hour and worked for 0.9 hours; Adel, a shareholder, had a rate of $590/hour

23 │ and worked for 0.4 hours; Burkow, an associate, had a rate of $275-$305/hour and

24 │ worked for 65.4 hours; Tran, an associate, had a rate of $475-$495/hour and worked

25 │ for 78.1 hours; McGrady, a shareholder, had a rate of $375/hour and worked for 16

26 │ hours. As for the paralegals, Elster states that Varga billed at $245/hour for 1.7

27 │ hours, Grierson billed at $200/hour for 1.2 hours, Sandoval billed at $230/hour for

28 │ 7.8 hours, Hutcherson billed at $240/hour for 31.14 hours, and Milton billed at

1 $175/hour for 25.4 hours. Elster states that the billing rates for these attorneys and

2 paralegals were comparable to the rates charged by similar firms in their respective

3 markets for work performed by individuals of similar experience.

4   Section 35(a) of the Lanham Act provides that a court may award reasonable

5 attorney's fees to the prevailing plaintiff in "exceptional cases." 15 U.S.C.

6 § 1117(a). "A trademark case is exceptional where the district court finds that the

7 defendant acted maliciously, fraudulently, deliberately, or willfully." *Earthquake*

8 *Sound Corp. v. Bumper Indus.*, 352 F.3d 1210, 1216 (9th Cir. 2003). A case may

9 also be exceptional when a defendant disregards the proceedings and does not

10 appear. *Philip Morris USA, Inc. v. Castworld Prods., Inc.*, 219 F.R.D. 494, 502

11 (C.D. Cal. 2003). The Court finds this case exceptional based on Defendants'

12 willful conduct and disregard for the judicial process.

13   In the Ninth Circuit, the starting point for the calculation of reasonable fees is

14 the "lodestar." *Secalt S.A. v. Wuxi Shenxi Constr. Mach.*, 668 F.3d 677, 689 (9th

15 Cir. 2012) (citing *Intel Corp v. Terabyte Int'l, Inc.*, 6 F.3d 614, 622 (9th Cir. 1993)).

16 The lodestar is calculated by multiplying the number of hours reasonably expended

17 on the litigation by a reasonable hourly rate. *Camacho v. Bridgeport Financial,*

18 *Inc.*, 523 F.3d 973, 978 (9th Cir. 2008). The lodestar is presumptively reasonable,

19 but in rare cases, the court may adjust it based on various factors. *Secalt*, 668 F.3d

20 at 689. A court should review the attorneys' time sheets to determine the

21 reasonableness of the hours claimed, and it should look to the prevailing rate in the

22 community for similar work performed by attorneys of comparable skill, experience

23 and reputation to gauge the reasonableness of the charged rate. *Chalmers v. City of*

24 *Los Angeles*, 796 F.2d 1205, 1210-11 (9th Cir. 1986), *amended on other grounds*,

25 808 F.2d 1373 (9th Cir. 1987). "[A]ttorney's fees under the Lanham Act may also

26 include reasonable costs that the party cannot recover as the 'prevailing party.'"

27 *Secalt*, 668 F.3d at 690.

28   Plaintiffs contend that they incurred $19,960.50 in attorney's fees for

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1 preparing and filing the complaint, $40,105 in attorney's fees for preparing an

2 alternative service motion and related papers, and $30,028.10 in attorney's fees for

3 preparing a motion for default judgment and related papers. Elster Aff. ¶ 15.

4 Plaintiffs have submitted time records documenting 56.5, 134.1, and 85.24 hours,

5 respectively spent on these tasks by the attorneys and paralegals mentioned above.

6 Having reviewed the time sheets, the Court concludes that under the circumstances,

7 the time spent was reasonable.

8   The appropriateness of the billable rates present a closer question. The party

9 seeking fees bears the burden of demonstrating that the rates used are in line with

10 the prevailing market rate of the relevant community, *Carson v. Billings Police*

11 *Dep't*, 470 F.3d 889, 891 (9th Cir. 2006), although a court may in its discretion rely

12 on its own knowledge and experience with the legal market, *Ingram v. Oroudjian*,

13 647 F.3d 925, 928 (9th Cir. 2011) (per curiam). Typically, the "relevant

14 community" is "the forum in which the district court sits." *Camacho*, 523 F.3d at

15 979 (citing *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997)). Elster's affidavit

16 states only that the rates charged by the attorneys and paralegals were comparable to

17 those of similarly qualified individuals in their respective markets, namely Chicago

18 and Orange County. While the affidavit does not directly address rates in the

19 Southern District of California, the rates used appear reasonable based on the results

20 obtained, the Court's knowledge of the market, and fee awards in similar cases. *See*

21 *Brighton Collectibles, Inc. v. Coldwater Creek Inc.*, No. 06-CV-01848-H (POR),

22 2009 U.S. Dist. LEXIS 4005, at *12 (S.D. Cal. Jan. 20, 2009) (approving fees in a

23 Lanham Act case at hourly rates ranging from $90 to $210 per hour for paralegal

24 work and $125 to $625 per hour for attorney work). As Defendants have not

25 appeared to oppose this motion, Plaintiffs' request for attorney's fees is granted.

26   **II.   LITIGATION COSTS**

27   A prevailing Lanham Act plaintiff is entitled to the costs of the action. 15

28 U.S.C. § 1117(a). Plaintiffs seek an award of $350, the cost of filing the complaint.

1 │ Elster Aff. ¶ 18. Plaintiffs request is reasonable. It is therefore granted.

2 │ <center>**CONCLUSION**</center>

3 │   For the reasons set out above, the Court awards Plaintiffs attorney's fees in

4 │ the amount of $90,093.60 and costs in the amount of $350.

5 │   **IT IS SO ORDERED**.

6 │

7 │ DATED: April __, 2013

8 │ HON. ROGER T. BENITEZ
    United States District Court Judge